IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4278 OF 2006

Lakhpatraj Sampatraj Jain ...Applicant

vs.

State of Maharashtra and another ...Respondents

Mr.U.P.Warunjikar for the Applicant
Mr.D.P.Adsule,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : DECEMBER 6,2006.

P.C.:

1. Heard Shri Warunjikar for the Applicant. The applicant is the complainant in a complaint under section 138 of the Negotiable Instruments Act, 1881. The second Respondent accused has been acquitted mainly on the ground that the Applicant could not establish the service of notice of demand as required by clause (b) of section 138 of the said Act of 1881.

2. Shri Warunjikar for the Applicant submitted that the second Respondent has not stepped into witness box to rebut the presumption as regards the service of notice. He submitted that the notice sent by the applicant was on the correct address of the second Respondent. He pointed out that the notice was sent at the address of the second Respondent which is reflected in the plea of the second Respondent.

3. I have considered the submissions. This is a case where notice was sent by R.P.A.D. The envelope containing the notice has been returned to the Applicant with the remark ‘Left address’. A copy of the notice was not sent under certificate of posting in addition to sending it by R.P.A.D. As the notice has been received back with the remark ‘Left address’, the learned Trial Judge has taken into consideration a distinct possibility that the notice may not have been received by the second Respondent. In view of the postal remark on the envelope, the view taken by the learned Judge as regards non service of notice is certainly a possible view which could have been taken on the basis of material on record. Therefore, no case is made out for grant of leave. Application is rejected.

JUDGE